



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Racing Commission
VAC Chapter Number:	11 VAC 10-180-10 <i>et seq.</i>
Regulation Title:	Medication
Action Title:	Amendment
Date:	03/27/2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Virginia Racing Commission has adopted amendments to its regulations pertaining to medication in racehorses contained within 11 VAC 10-180-10 *et seq.*

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 19, 2003, the Virginia Racing Commission adopted the final regulation entitled Medication (11 VAC 10-180-10 *et seq.*).

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The Virginia Racing Commission derives its statutory authority to promulgate regulations from the provisions of §59.1-369 of the Code of Virginia. The Code states, in part in subdivision 3, “The Commission shall promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter. Further, the commission regulatory action relating to medication in racehorses is exempted under the provisions of §2.2-4002 (B) (23) of the Virginia Administrative Process Act.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

In accepting the recommendations of its Racing Safety and Medication Committee, the Virginia Racing Commission has sought to keep its regulations in accord with those of neighboring jurisdictions. The committee is composed of veterinarians, trainers, racing officials and licensees from across the Commonwealth to provide advice in the promulgation of the regulations. The committee and the commission agreed that certain changes were necessary to keep its regulations on the medication of racehorses in accordance with those in other nearby states. By making these

amendments, the commission has detailed the specific actions essential to protect the health, safety and the welfare of the participants in horse racing as well as the welfare of the racehorses.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

There are four new substantive provisions to ensure the health, safety and welfare of the participants and racehorses within the regulations: (i) the possession or administration of Erythropietin or any analogous substance is prohibited, (ii) prohibits the use of shockwave on racehorses ten days prior to a race, (iii) racehorses are not to be treated prior to three hours before post time, and (iv) further restricts the levels of carbon dioxide concentrations in post-race testing.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The four new substantive provisions are required to maintain the integrity of horse racing within the Commonwealth. First, the prohibition of the possession or administration of Erythropietin or any analogous substance will prevent the use of this performance-enhancing drug. Second, the restriction on the use of shockwave therapy devices ten days prior to post time ensures that only safe and sound racehorses will be allowed on the racetrack. Third, the restriction on treating racehorses three hours prior to post time will also ensure the integrity of horse racing within the Commonwealth. Fourth, the further restriction on the amounts of carbon dioxide concentrations raises the level of post-race testing.. These four new substantive provisions are essential if the integrity of horse racing within the Commonwealth is to be accomplished.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The regulation Medication (11 VAC 10-180-10 *et seq.*) is exempted from the Virginia Administrative Process Act; however, the amendments were discussed with the Racing Safety and Medication Committee in a special February meeting and again during the March meeting of the Virginia Racing Commission.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

There was public comment and comment among the Commissioners when the amendments to the regulations were adopted at the March 19, 2003 meeting.

John Mooney, president of the Maryland-Virginia Racing Circuit, stated that the membership of the Jockeys' Guild had concerns about the use of shockwave therapy devices. He indicated that the devices were helpful for racehorses; however, they tended to reduce the sense of feeling on horses legs after treatment. He explained this is why the Maryland Racing Commission prohibited the use of shockwave therapy devices seven days prior to racing.

Among the Commissioners, there was a concern about the number of days of the prohibition. They voted to extend the prohibition to a term of ten days. However, the Commissioners, prior to the opening of Colonial Downs in mid-June, wanted again to revisit the ten-day prohibition.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

In Section 20, three new subsections have been added.

In Subsection J, the possession or administration of Erythropietin or any analogous substance is prohibited. The substance or substances has the effect of increasing the oxygen-carrying capacity of the blood of the racehorse and therefore affect the horse's performance.

In Subsection K, a veterinarian, who is a permit holder, must administer a shockwave therapy device. The veterinarian shall report the possession of a shockwave therapy device to the commission veterinarian. Finally, there is a ten-day prohibition on the use of the device prior to racing a horse.

In Subsection L, no substance may be administered to a racehorse three hours prior to post time.

In Section 60, Erythropitein is classified as a Class 1 substance.

In Section 80, the three-hour prohibition on administering furosemide to a racehorse has been deleted because of the provisions contained within Section 20 (L).

In Section 90, the amount of carbon dioxide concentration shall not exceed 37.0 millimoles per liter, regardless of whether or not the racehorse was administered furosemide prior to racing.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulations pertaining to medication in a racehorse will have no impact on the family or family stability.